

COMMISSIONERS APPROVAL

GRANDSTAFF *cg*

ROKOSCH *JGR*

THOMPSON *Absent*

CHILCOTT *gl*

DRISCOLL *KD*

PLETTENBERG (Clerk & Recorder)

Members Present..... Commissioner Carlotta Grandstaff, Commissioner Jim Rokosch, Commissioner Alan Thompson, Commissioner Greg Chilcott and Commissioner Kathleen Driscoll

Date..... June 17, 2008

Minutes: Beth Perkins

► The Board met for a public hearing for Bella Sera Minor Subdivision plus one variance request. Present were Planner Tristan Riddell, Representative George Marshall, and Owner Joyce Shimmon.

Commissioner Grandstaff opened the hearing and requested any conflicts of interest, Commissioner Rokosch stated he did have a conversation with Alan Maki and put in a request to NRCS for a soils analysis, testimony for the composition of soil mapping and percentage of prime agricultural soils. Commissioner Grandstaff stated she also had a conversation with Alan Maki however; she did not contact NRCS. She then requested the Planning Staff Report and variance be read.

Tristan presented the Staff Report and variance request as follows:

**BELLA SERA
THREE-LOT MINOR SUBDIVISION AND VARIANCE REQUEST
STAFF REPORT FOR BOARD OF COUNTY COMMISSIONERS**

CASE PLANNER: Tristan Riddell

**REVIEWED/
APPROVED BY:** John Lavey

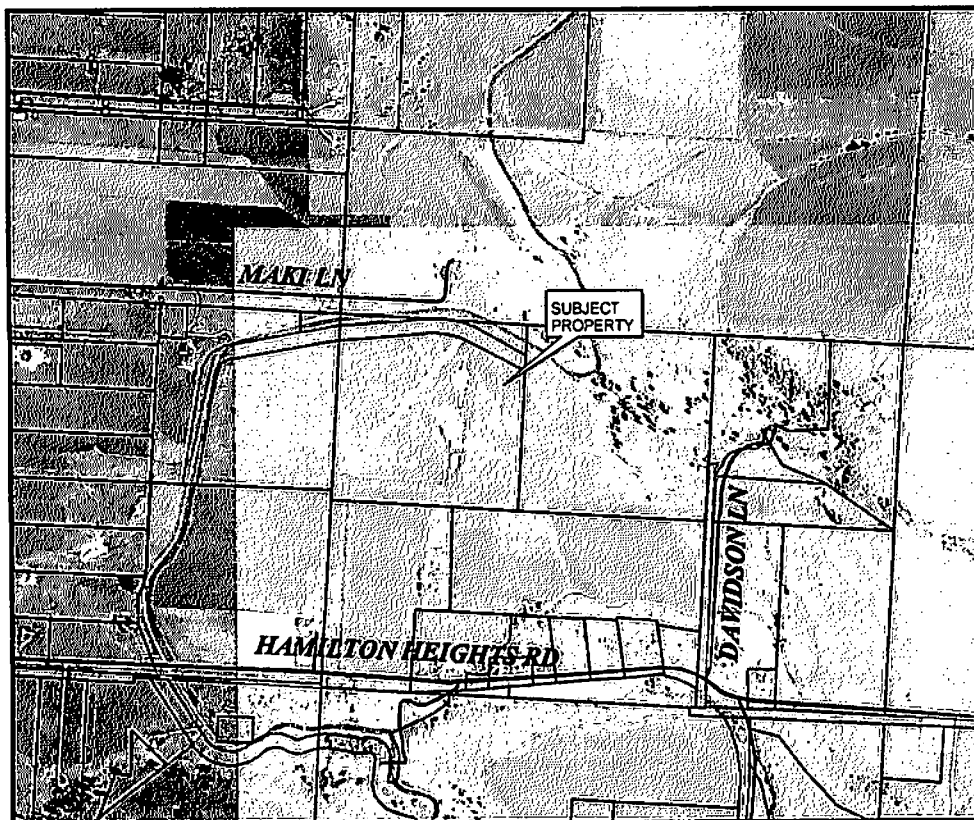
PUBLIC MEETINGS: BCC Public Meeting: 9:00 a.m. June 17, 2008

Deadline for BCC action (35 working days): June 27, 2008

SUBDIVIDER: Joyce Shimon
984 Hamilton Heights Road
Corvallis, MT 59828

REPRESENTATIVE: Alcyon, LLC
George Marshall
PO Box 218
Hamilton, MT 59840

LOCATION OF REQUEST: The property is located southeast of Corvallis off Hamilton Heights Road. (See Map 1)



Map 1: Location Map
(Source Data: Ravalli County GIS Department)

LEGAL DESCRIPTION OF PROPERTY: NW ¼ of Section 13, T6N, R20W, P.M.M., Ravalli County, Montana.

APPLICATION INFORMATION: The subdivision application was determined sufficient on May 2, 2008. Agencies were notified of the subdivision on October 22, 2007 and March 20, 2008.

Comments received from agencies are Exhibits A-1 through A-12 of the staff report. **This subdivision is being reviewed under the Ravalli County Subdivision Regulations (RCSR) amended May 24, 2007.**

LEGAL NOTIFICATION: Notice of the project was posted on the property and adjacent property owners were notified by mail dated June 2, 2008. Public comments are included as Exhibits B-1 through B-4.

**DEVELOPMENT
PATTERN:**

Subject property:	Large lot residential
North:	Agricultural
South:	Agricultural/Residential
East:	Agricultural/Residential
West:	Agricultural/Residential

INTRODUCTION

Bella Sera is a three-lot minor subdivision proposed on 35.26 acres. The proposal is for three residential lots. Lots will be served by individual wells and septic systems. There is currently one existing residence on the property.

The applicant has requested a variance from Section 5-4-4(h), Table B-1 of the RCSR to allow the internal cul-de-sac road to exceed the maximum length of 1,400 feet. Chapter 2 of the RCSR defines cul-de-sac road as "a street having only one outlet for vehicular traffic and terminating in a vehicle turn-around area". The proposed internal cul-de-sac road (Bella Sera Way) is approximately 2,150 feet in length.

Staff recommends conditional approval of the subdivision proposal and approval of the variance.

RAVALLI COUNTY BOARD OF COMMISSIONERS

JUNE 17, 2008

BELLA SERA

THREE-LOT MINOR SUBDIVISION AND VARIANCE REQUEST

PLANNING STAFF RECOMMENDED MOTION

1. That the variance request from Section 5-4-4(h), Table B-1 of the Ravalli County Subdivision Regulations to allow for a maximum cul-de-sac length to exceed 1400-feet, be ***approved***, based on the findings of fact and conclusions of law in the staff report.

2. That the Bella Sera Minor Subdivision be **approved**, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.

PLANNING STAFF RECOMMENDED CONDITIONS

1. A document entitled "Notifications to Future Property Owners" that includes the following notifications and the attachments listed below shall be included in the submittal of the final plat to the Planning Department and filed with the final plat:

Notification of Proximity to Agricultural Operations. This subdivision is located near existing agricultural activities. Some may find activities associated with normal agricultural activities objectionable and dangerous. (Section 3-2-8(b)(v), RCSR, Effects on Agriculture)

Notification of Irrigation Facilities and Easements. Within this subdivision there are irrigation and drainage easements, as shown on the final plat. All downstream water right holders have the right to maintain and repair their irrigation facilities whenever necessary to keep them in good condition. Activities associated with the maintenance of irrigation facilities may include the operation of heavy equipment, the occasional burning of ditch vegetation, and the use of herbicides. Any act that damages or destroys a ditch, interferes with its operation or maintenance in any way, or restricts access to the ditch so as to interfere with its maintenance, which includes but is not limited to the placement of structures or the planting of vegetation other than grass, is expressly prohibited. (Section 3-2-8(a) and Section 3-2-8(b)(v)(B), RCSR, Effects on Agricultural Water User Facilities)

Notification of Water Rights. No lots within this subdivision have the right to take water from the BRID Canal. Taking water without a water right for any purpose is illegal. Residents should consult with the Montana Department of Natural Resources for questions on water rights. (Section 3-2-8(b)(v)(B), RCSR, Effects of Agricultural Water User Facilities)

Notification of Setback from BRID Canal. Within this subdivision there is a 50-foot setback along the entire northern property boundary, along the BRID Canal. No new structure may be constructed in this area. Roads, trails, and utility crossings through this area is not permitted. However, the proper use of chemicals or other methods of control for noxious weeds is allowed. Activities associated with the maintenance and upkeep of the BRID canal are permitted. (Section 3-2-8(b)(v), RCSR, Effects on Agricultural Water User Facilities & Public Health and Safety)

Notification of Road Maintenance Agreement. The internal subdivision road is not maintained by Ravalli County, the State of Montana, or any other governmental entity. Neither the County nor the State assumes any liability for lacking or improper maintenance. A road maintenance agreement for the road was filed with this subdivision and outlines which parties are responsible

for maintenance and under what conditions. (*Section 3-2-8(b)(v)(B), RCSR, Effects on Local Services*)

Notification of No-Build/Alteration Zones. Within this subdivision there are no-build/alteration zones, as shown on the plat, to restrict building in areas with steep slopes associated with the gravel pit. No new structure, with the exception of fences, may be constructed in these areas. No new utilities may be constructed in these areas. No fill may be placed in these areas and the vegetation shall be retained in its natural condition. Roads, trails, and utility crossings through these areas are not permitted. **(NOTE: Should the subdivider choose to fill the gravel pit this may be removed from the Notifications Document.)** (*Section 3-2-8(b)(v)(B), RCSR, Effects on Public Health & Safety*)

Notification of "very limited" Soils. Within this subdivision there are areas of the property identified as potentially having soils rated as "very limited" for road construction and building sites. The approximate locations of these areas can be found on a reduced copy of the final plat and descriptions of the very limited and severe soils in question are included as exhibits to this document [*the applicant shall include the reduced plat and exhibits as attachments*]. (*Section 3-2-8(b)(v)(B), RCSR, Effects on Public Health and Safety*)

2. Protective covenants for this subdivision shall be submitted with the final plat that include the following provisions:

Living with Wildlife. Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets, and properly storing garbage, pet food, livestock feed and other potential attractants. Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as deer, elk, black bear, mountain lion, wolf, coyote, fox, skunk, raccoon and magpie. Each lot owner shall obtain or be provided and read a copy of the brochure "Living with wildlife," available from the Montana Fish, Wildlife & Parks office in Missoula. Contact Fish, Wildlife & Parks for brochures that can help homeowners "live with wildlife." Alternatively, see FWP's web site at www.fwp.mt.gov. (*Section 3-2-8(b)(v), RCSR, Effects on Agriculture and Wildlife & Wildlife Habitat*)

The following covenants are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property and the wildlife that Montanans value.

- a. There is high potential for **vegetation damage by wildlife, particularly from deer** feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners must be aware of this potential

damage. They should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Homeowners should consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.

- b. **Gardens, fruit trees or orchards** are a major wildlife attractant, and fruit-bearing trees and shrubs can regularly attract bears in the fall. Keep produce and fruit picked and off the ground, because ripe or rotting fruit or vegetable material can attract bears, skunks and other wildlife. Gardens should be fenced with one-foot of fencing material below ground level and be at least eight feet in height, in order to discourage wildlife such as deer from feeding in gardens. The top rail should be made of something other than wire to prevent wildlife from entanglement. Netting over gardens can help deter birds from eating berries.
- c. If stored outdoors, **garbage** should be in secure bear-resistant containers; otherwise it should be stored indoors prior to curbside pick-up or transport to a centralized garbage collection site, in order to avoid attracting wildlife such as bears and raccoon. If curbside garbage pick-up is available, garbage cans may not be set out until the morning of garbage pickup and must be brought in no later than that same evening.
- d. **Do not feed wildlife** or offer supplements (such as salt blocks), attractants, or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against state law (MCA 87-3-130) to purposely or knowingly attract bears with supplemental food attractants (any food, garbage, or other attractant for game animals) or to provide supplemental feed attractants in a manner that results in "an artificial concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety." Also, homeowners must be aware that deer might occasionally attract mountain lions to the area.
- e. **Birdseed** is an attractant to bears. If used, bird feeders must: a) be suspended a minimum of 15 feet above ground level, b) be at least 4 feet from any support poles or points, and c) should be designed with a catch plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.
- f. **Pets** must be confined to the house, in a fenced yard, or in an outdoor kennel area when not under the immediate control of the owner, and not be allowed to roam as they can chase and kill big game and small birds and mammals. Under current state law it is illegal for dogs to chase hoofed game animals and the owner may also be held guilty (MCA 87-3-124). Keeping pets confined also helps protect them from predatory wildlife.
- g. **Pet food and livestock feed** must be stored indoors, in closed sheds or in animal-resistant containers in order to avoid attracting wildlife such

bears, mountain lions, skunks, raccoons, and other wildlife. **When feeding pets and/or livestock** do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home.

- h. **Barbecue grills** should be stored indoors, and permanent outdoor barbecue grills are discouraged. Keep all portions of the barbecues clean. Food spills and smells on and near the grill can attract bears and other wildlife.
- i. Consider **boundary fencing** that is no higher than 3-1/2 feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in order to facilitate wildlife movement and help avoid animals such as deer becoming entangled in the fence or injuring themselves when trying to jump the fence. We encourage the use of split rail fences.
- j. **Compost piles** can attract skunks and bears and should be avoided. If used they should be kept indoors or built to be wildlife-resistant. Compost piles should be limited to grass, leaves, and garden clippings, and piles should be turned regularly. Adding lime can reduce smells and help decomposition. Do not add food scraps. (Kitchen scraps could be composted indoors in a worm box with minimum odor and the finished compost can later be added to garden soil.)
- k. **Apiaries (bee hives)** could attract bears in this area and should be avoided. (If used, consult Montana Fish, Wildlife & Parks or the U.S. Fish & Wildlife Service for help in planning and constructing an apiary system that will help deter bears.)
- a. These "living with wildlife" covenants cannot be altered or eliminated without consent of the governing body (Ravalli County Commissioners).

Lighting for New Construction. To promote public health and safety, reduce energy consumption, and reduce impacts to nocturnal wildlife, full cut-off lighting is recommended for any new construction within this subdivision. A full cut-off fixture means a fixture, as installed, that is designed or shielded in such a manner that all light rays emitted by the fixture, either directly from the lamps or indirectly from the fixture, are projected below a horizontal plane through the lowest point on the fixture where light is emitted. The source of light should be fully shielded on the top and sides, so as not to emit light upwards or sideways, but only allowing light to shine down towards the subject that is to be lighted. For more information, visit www.darksky.org. (Section 3-2-8(b)(v), RCSR, *Effects on Natural Environment*)

Radon Exposure. The owner understands and accepts the potential health risk from radon concentrations, which are presently undetermined at this location. Unacceptable levels of radon can be reduced through building design and abatement techniques incorporated into structures. Property owners are encouraged to have their homes tested for radon. Contact the Ravalli County Environmental Health Department for further information. (Section 3-2-8(b)(v), RCSR, *Effects on Public Health & Safety*)

Irrigation Facilities and Easement. Within this subdivision there are irrigation easements, as shown on the final plat. All downstream water right holders have the right to maintain and repair their irrigation facilities whenever necessary to keep them in good condition. Activities associated with the maintenance of irrigation facilities may include the operation of heavy equipment, the occasional burning of ditch vegetation, and the use of herbicides. Any act that damages or destroys a ditch, interferes with its operation or maintenance in any way, or restricts access to the ditch so as to interfere with its maintenance, which includes but is not limited to the placement of structures or the planting of vegetation other than grass, is expressly prohibited. (Section 3-2-8(a) and Section 3-2-8(b)(v)(B), RCSR, Effects on Agricultural Water User Facilities)

Setback from BRID Canal. Within this subdivision there is a 50-foot wide setback from the BRID Canal, along the entire northern property boundary. No new structure may be constructed in this area. Roads, trails, and utility crossings through this area is not permitted. However, the proper use of chemicals or other methods of control for noxious weeds is allowed. Activities associated with the maintenance and upkeep of the BRID canal are permitted. (Section 3-2-8(b)(v), RCSR, Effects on Agricultural Water User Facilities & Public Health and Safety)

Maintenance of fencing along BRID Canal. The homeowners shall be responsible for maintaining the safety fencing located along the northern subdivision boundary. Each lot owner shall be responsible for maintaining the portion of the fence on their lot to meet the specifications in Section 5-6-2(b) of the Ravalli County Subdivision Regulations. (Section 3-2-8(b)(v), RCSR, Effects on Public Health & Safety)

Control of Noxious Weeds. A Ground Disturbance and Noxious Weed Management Plan for the control of noxious weeds and the re-vegetation of all soils disturbed within the subdivision has been filed in conjunction with this subdivision. Lot owners shall control the growth of noxious weeds on their respective lot(s). Contact the Ravalli County Weed District for further information. (Section 3-2-8(b)(v), RCSR, Effects on Agriculture and Natural Environment)

Required Posting of County-Issued Addresses for Lots within this Subdivision. The Corvallis Rural Fire District has adopted the Fire Protection Standards, which require lot owners to post County-issued addresses at the intersection of the driveway leading to each residence and the road providing access to the lot as soon as construction on the residence begins. (Section 3-2-8(b)(v), RCSR, Effects on Local Services and Public Health & Safety)

Notification of No-Build/Alteration Zones. Within this subdivision there are no-build/alteration zones, as shown on the plat, to restrict building in areas with steep slopes associated with the gravel pit. No new structure, with the

exception of fences, may be constructed in these areas. No new utilities may be constructed in these areas. No fill may be placed in these areas and the vegetation shall be retained in its natural condition. Roads, trails, and utility crossings through these areas are not permitted. **(NOTE: Should the subdivider choose to fill the gravel pit this may be removed from the Covenants Document.)** *(Section 3-2-8(b)(v)(B), RCSR, Effects on Public Health & Safety)*

Access Requirements for Lots within this Subdivision. The All Valley Fire Council, which includes the Corvallis Rural Fire District, has adopted the Fire Protection Standards. All accesses, including driveways to residences over 150' in length, must have a minimum unobstructed travel surface width of 22', a vertical clearance of 13'6" and an all-weather surface that can accommodate the weight of a fire truck. Please contact the Corvallis Rural Fire District for further information. *(Section 3-2-8(b)(v), RCSR, Effects on Local Services and Public Health & Safety)*

Building Standards. The All Valley Fire Council recommends that houses within this subdivision be built to International Residential Building Code (IRBC) building standards. It is recommended that any commercial buildings be constructed to meet state building code requirements. *(Section 3-2-8(b)(v), RCSR, Effects on Local Services and Public Health & Safety)*

Wood Stoves. The County recommends that home owners refrain from installing wood stoves if possible. The County further recommends that wood and other biomass burning stoves not be used as the primary heat source. If a homeowner chooses to burn wood as a back-up heat source, the County strongly encourages them to install an EPA-certified wood stove as the best option to reduce air pollution and more specifically, to install an EPA-certified pellet stove. More information on low emission, EPA-certified wood stoves is available at <http://www.epa.gov/woodstoves/index.html>. The State of Montana offers an Alternative Energy Systems Tax Credit to offset the cost of purchasing and installing a low emission wood or biomass combustion device such as a pellet or wood stove. Besides the tax credit for qualifying wood stoves, individual Montana residents can claim a tax credit for energy conservation investments made to a home or other building. For more information on the energy conservation tax credits and ways to save energy, please see the *Warm Hearts, Warm Homes* webpage (<http://deq.mt.gov/Energy/warmhomes/index.asp>) on the Montana Department of Environmental Quality's website. *(Section 3-2-8(b)(v)(B), RCSR, Effects on the Natural Environment)*

Archeological Resources. If any archaeological, historic, or paleontological sites are discovered during road, utility, or building construction, all work will cease and the State Historic Preservation Office shall be contacted to determine if the find constitutes a cultural resource and if any mitigation or curation is appropriate. *(Section 3-2-8(b)(v), RCSR, Effects on Natural Environment)*

Amendment. Written governing body approval shall be required for amendments to provisions of the covenants that were required to be included as a condition of subdivision approval. *(Section 3-2-8(b)(v), RCSR, Effects on all six criteria)*

3. The subdividers shall include an RSID/SID waiver in a notarized document filed with subdivision plat that states the following: Owners and their successors-in-interest waive all rights in perpetuity to protest the creation of a city/rural improvement district for any purpose allowed by law, including, but not limited to a community water system, a community wastewater treatment system, and improving and/or maintaining the roads that access the subdivision including related right-of-way, drainage structures, and traffic control signs. *(Section 3-2-8(b)(v), RCSR, Effects on Local Services and Public Health and Safety)*
4. The subdivider shall provide evidence with the final plat submittal that they have applied for County-issued address for all lots. *(Section 3-2-8(b)(v), RCSR, Effects on Local Services and Public Health & Safety)*
5. Prior to final plat approval, the subdividers shall provide a letter from the Corvallis Rural Fire District stating that the subdividers have provided the required 1,000 gallon-per-minute water supply or 2,500 gallon-per-lot water storage for fire protection for each lot. Alternatively, the subdividers may provide evidence that an amount-per-lot contribution has been submitted to the Corvallis Rural Fire District with the final plat submittal in lieu of the required water supply or water storage for fire protection. *(Section 3-2-8(b)(v), RCSR, Effects on Local Services and Public Health & Safety)*
6. The following statement shall be shown on the final plat: "The All Valley Fire Council, which includes the Corvallis Rural Fire District, has adopted Fire Protection Standards. All accesses, including driveways to residences over 150' in length, must have a minimum unobstructed travel surface width of 22', a vertical clearance of 13'6" and an all-weather surface that can accommodate the weight of a fire truck. Please contact the Corvallis Rural Fire District for further information". *(Section 3-2-8(b)(v), RCSR, Effects on Local Services and Public Health & Safety)*
7. The subdivider shall submit a letter or receipt from the Corvallis School District stating that they have received a (amount to be determined at the Commissioner meeting) per lot contribution prior to final plat approval. *(Section 3-2-8(b)(v), RCSR, Effects on Local Services)*
8. The subdivider shall submit (amount to be determined at the Commissioner meeting) per lot to the Ravalli County Treasurer's Office to be deposited into an account for Public Safety Services (Sheriff, E-911, DES) prior to final plat

approval. *(Section 3-2-8(b)(v), RCSR, Effects on Local Services and Public Health and Safety)*

9. The internal subdivision road shall be labeled as a public road and utility easement on the final plat. *(Section 3-2-8(b)(v)(B), RCSR, Effects on Local Services)*
10. A stop sign and road name sign shall be installed at the intersection of the internal subdivision road and Hamilton Heights Road prior to final plat approval. *(Section 3-2-8(b)(v)(B), RCSR, Effects on Local Services and Public Health & Safety)*
11. The final plat shall show a 50-foot wide setback from the BRID Canal along the entire northern boundary of the property. *(Section 3-2-8(b)(v)(B), RCSR, Effects on Agricultural Water User Facilities & Public Health and Safety)*
12. Staff recommends that the applicant negotiate a contribution with the BCC, to be deposited into an account for the Open Lands Program, as a way of offsetting the loss of prime farmlands. *(Section 3-2-8(b)(v), RCSR, Effects on Agricultural)*
13. The applicant shall fill the gravel pit located on Lot 2. Alternatively, the gravel pit shall be graded at a slope of 2:1 and be labeled as a no-build/alteration zone on the final plat. *(Section 3-2-8(b)(v), RCSR, Effects on Public Health and Safety)*

FINAL PLAT REQUIREMENTS (RAVALLI COUNTY SUBDIVISION REGULATIONS)

The following items shall be included in the final plat submittal, as required by the Ravalli County Subdivision Regulations, Section 3-4-4(a) et seq.

1. A statement from the project surveyor or engineer prior to final plat approval outlining how each final plat requirement or condition of approval has been satisfied.
2. One paper and two Mylar 18" x 24" or larger copies of the final plat, completed in accordance with the Uniform Standards for Final Subdivisions Plats (ARM 8.94.3003). (One paper copy may be submitted for the first proofing.) The final plat shall conform to the preliminary plat decision. In accordance with the conditions of approval and RCSR Section 3-4-4(a)(ii), the following features are required on the Final Plat:
 - a. Project name
 - b. Title block
 - c. Certificate of registered owner – notarized
 - d. Certificate of registered land surveyor with seal
 - e. Certificate of governing body approval
 - f. Signature block for Clerk and Recorder, preferably in lower right hand corner

- g. Certificate of public dedication
 - h. Certificate of park cash-in-lieu payment
 - i. Other certifications as appropriate
 - j. North arrow
 - k. Graphic scale
 - l. Legal description
 - m. Property boundaries (bearings, lengths, curve data)
 - n. Pertinent section corners and subdivision corners
 - o. Names of adjoining subdivisions/certificates of survey
 - p. Monuments found
 - q. Witness monuments
 - r. Acreage of subject parcel
 - s. Curve data (radius, arc length, notation of non-tangent curves)
 - t. Line data (lengths to tenths of a foot, angles/bearings to nearest minute)
 - u. Lots and blocks designated by number (dimensions/acreage)
 - v. Easements/rights of ways (location, width, purpose, ownership)
 - w. Dedication for public use
 - x. No-build/alteration zones
 - y. No-ingress/egress zones
 - z. Water resources (rivers, ponds, etc.)
 - aa. Floodplains
 - bb. Irrigation canals including diversion point(s), etc.
 - cc. High-pressure gas lines
 - dd. Existing and new roads (names, ownership, etc.)
 - ee. Existing and proposed utility, irrigation, and drainage easements, as shown on the preliminary plat, shall be shown on the final plat.
 - ff. No-build/alteration and no-build zones shall be shown on the plat as shown on the preliminary plat.
 - gg. The internal subdivision roads shall be labeled as "public road and utility easements" on the final plat.
3. The original copy of the preliminary plat decision shall be submitted with the final plat submittal.
 4. Any variance decisions shall be submitted with the final plat submittal.
 5. Copies of extensions of the preliminary plat approval period shall be submitted with the final plat submittal.
 6. The final plat review fee shall be submitted with the final plat submittal.
 7. Consent to Plat form, including notarized signatures of all owners of interest, if the developer is not the underlying title holder, shall be submitted with the final plat submittal.
 8. A Title Report or updated Abstract dated no less than one (1) year prior to the date of submittal shall be submitted with the final plat submittal.
 9. The DEQ Certificate of Subdivision Approval or RCEH approval shall be submitted with the final plat submittal.

10. Copy of the General Discharge Permit for Stormwater Associated with Construction Activity from the DEQ shall be submitted with the final plat submittal.
11. The approved Ground Disturbance and Noxious Weed Management Plan for the control of noxious weeds and the re-vegetation of all soils disturbed within the subdivision shall be submitted with the final plat submittal.
12. A copy of the appraisal report, per Section 6-1-7, dated no less than six (6) months from the date of submittal, for calculating the cash-in-lieu of parkland dedication and a receipt from the County Treasurers Office for the payment of cash-in-lieu of parkland dedication.
13. Road and Driveway approach and encroachment permits from RCRBD for the new approach and the change of use for the existing approach to Dairy View Lane.
14. Evidence of Ravalli County approved road name petitions for each new road.
15. Engineering plans and specifications for all central water and sewer systems and any other infrastructure improvements requiring engineering plans.
16. Final Road Plans and Grading and Storm Water Drainage Plans for Bella Sera Way shall be submitted with the final plat submittal.
17. Road certification(s). *(Staff Note: A professional engineer's certification on the road plans and final approval from the Road Department shall meet this requirement.)*
18. Utility availability certification(s) shall be submitted with the final plat submittal.
19. A Road Maintenance Agreement, signed and notarized, shall be submitted with the final plat submittal.
20. Signed and notarized Master Irrigation Plan, or if one is not required, written and notarized documentation showing how the water rights are to be divided or written and notarized documentation indicating that the water rights will be removed from the property.
21. A notarized statement from each downstream water user specifically authorizing any alteration, such as installation of culverts, bridges, etc., or relocation of an irrigation ditch.
22. Protective covenants to be filed with the final plat that are signed and notarized shall be submitted with the final plat submittal.
23. Copies of permits issued by the Bitterroot Conservation District or the US Army Corps of Engineers when construction occurs on environmentally sensitive features shall be submitted with the final plat submittal.
24. A copy of the letter sent to the School District stating the applicant has made or is not willing to make a voluntary contribution to the school district to mitigate impacts of the subdivision on the school district that are not related to capital facilities; shall be submitted with the final plat submittal.
25. Signed and notarized homeowner association documents, including bylaws, covenants, and/or declarations.
26. The applicant shall pay the pro rata share of the cost to improve the portion of Hamilton Heights Road leading to the subdivision prior to final plat approval. (Section 5-4-5(d), RCSR)

27. Evidence that improvements have been made in accordance with the conditions of approval and requirements of final plat approval and certified by the subdivider, Professional Engineer, or contractor, as may be appropriate and required. A Professional Engineer's certification shall be required in any instance where engineered plans are required for the improvement. Alternatively, an improvements agreement and guaranty shall be required. (Refer to Section 3-4-2).
- a. Specific infrastructure improvements required for this subdivision are the installation of a stop sign and road name sign at roadway intersection, construction of the internal subdivision road, safety fencing set back 50 feet from the BRID ditch, and a water supply that meets the requirements of the Corvallis Fire District (if cash is not contributed in lieu of).

SUBDIVISION REPORT

COMPLIANCE WITH PREREQUISITES TO APPROVAL

Section 3-2-8(a) of the RCSR states that the BCC shall not approve or conditionally approve a subdivision application and preliminary plat unless it establishes by credible evidence that the proposed subdivision meets the following requirements:

A. Provides easements for the location and installation of any planned utilities.

Findings of Fact

1. Existing utilities are located along Hamilton Heights Road and within an existing 60-foot access and utilities easement as recorded in document #475720. (Bella Sera Preliminary Plat)
2. The applicant is proposing an 80-foot wide public road, utility, and ditch easement for the internal subdivision road, running along the southern end of the property. (Bella Sera Subdivision Preliminary Plat)
3. *Existing and proposed utility easements are required to be shown on the final plat. (Final Plat Requirement 2)*

Conclusion of Law

The proposed subdivision application provides for utility easements.

B. Provides legal and physical access to each parcel within the subdivision and the notation of that access is included on the applicable plat and in any instrument transferring the parcel.

Findings of Fact

1. The subdivision is accessed by Hamilton Heights Road and an internal subdivision road from Eastside Highway. (Bella Sera Subdivision Application)

2. Hamilton Heights Road is a County-maintained road, which provides legal and physical access. (RCSR – Exhibit A)
3. The applicant is required to pay the pro rata share of the cost to improve the portion of Hamilton Heights Road leading to the subdivision to meet County standards. The preliminary pro rata estimate included in the application projects that the applicant will be required to contribute approximately \$7,593 in pro rata funds. (Bella Sera Subdivision Application)
4. Bella Sera Way is a non-County-maintained, non-County standard road within an existing 60-foot wide easement, per document #475720. (Bella Sera Preliminary Plat)
5. The applicant is proposing to construct Bella Sera Way to meet County standards. (Bella Sera Subdivision Application)
6. The Road Department has granted preliminary approval of the road plans. (Exhibit A-1)
7. The applicant is proposing an 80-foot wide public road, utility, and ditch easement for the portion of Bella Sera Way located within the proposed subdivision. (Bella Sera Subdivision Application)
8. *To ensure legal and physical access to the subdivision, the following conditions and requirements shall be met:*
 - *The applicant is required to pay the pro rata share of the cost to improve the portion of Hamilton Heights Road leading to the subdivision prior to final plat approval. (Final Plat Requirement 26)*
 - *The applicant is required to submit final approval from the Road Department that Bella Sera Way has been constructed to meet County standards prior to final plat approval. (Final Plat Requirements 16, 17, and 27)*
 - *To ensure legal access, the applicant shall provide for a minimum of 60-foot wide public road and utility easement for Bella Sera Way on the final plat, as shown on the preliminary plat. (Final Plat Requirement 2)*

Conclusion of Law

With the requirements of final plat approval, legal and physical access will be provided via Hamilton Heights Road and Bella Sera Way.

- C. Assures that all required public or private improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by Section [3-4-2] of these regulations.**

Finding of Fact

The applicant is required to submit evidence that the following improvements have been made in accordance with the conditions of approval and requirements of final plat approval and certified by the subdivider prior to final plat approval (Final Plat Requirement 27):

- a. Specific infrastructure improvements required for this subdivision are the installation of a stop sign and road name sign at roadway intersection, construction of the internal subdivision road, safety fencing along the BRID ditch, and a water supply that meets the requirements of the Corvallis Fire District (if cash is not contributed in lieu of).

Conclusion of Law

The final plat requirements or an improvements agreement and guaranty will ensure that the improvements are installed.

- D. Assures that the requirements of 76-3-504(1)(j), MCA, regarding the disclosure and disposition of water rights as set forth in Chapter 5 have been considered and will be accomplished before the final plat is submitted.**

Findings of Fact

1. 76-3-504(1)(j), MCA states that when a subdivision creates parcels with lot sizes averaging less than 5 acres, the subdivider is required to:
 - (i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;
 - (ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or
 - (iii) reserve and sever all surface water rights from the land.
2. The subdivision has the following water rights which will be allocated among the newly created lots. (Application):
 - DNRC right 76H 1069-00, which appropriates 224.4 gallons per minute (GPM) from Willow Creek.
 - DNRC right 76H 1065-00, which appropriates 112.2 gallons per minute (GPM) from Willow Creek.
 - DNRC right 76H 1070-00, which appropriates 403.92 gallons per minute (GPM) from Willow Creek.
 - DNRC right 76H 1071-00, which appropriates 336.6 gallons per minute (GPM) from Willow Creek.
3. The average lot size for this proposal is approximately 11.75 acres. (Bella Sera Subdivision File)
4. The subdivider is proposing to distribute irrigation water among all proposed lots, and has submitted a master irrigation plan and irrigation agreement. (Bella Sera Subdivision File)

5. *A master irrigation plan will be recorded prior to final plat approval. The master irrigation plan shall indicate the allocation of water rights. (Requirement 20)*

Conclusion of Law

With the requirements of final plat approval, this prerequisite has been met.

- E. Assures that the requirements of 76-3-504(1)(k) MCA, regarding watercourse and irrigation easements as set forth in Chapter 5 have been considered and will be accomplished before the final plat is submitted.**

Findings of Fact

1. 76-3-504(1)(k) MCA states that, except as provided in subsection (1)(k)(ii) (the proposal does not meet the criteria in this subsection), the subdivider is required to establish ditch easements in the subdivision that:
 - (a) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;
 - (b) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and
 - (c) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.
2. Rock Ditch traverses the southern boundary of the proposed subdivision. (Bella Sera Subdivision File)
3. The applicant is proposing a 20-foot wide irrigation easement, a portion of which will be located within an 80-foot wide road, utility, and ditch easement, which will provide irrigation water to Lots 1 through 3. (Bella Sera Subdivision File)
4. The placement of structures or the planting of vegetation other than grass within the irrigation easement is prohibited. (76-3-504(1)(k) MCA).
5. *To ensure that the provisions of 76-3-504(1)(k) MCA are met, the following requirement and conditions shall be met prior to final plat approval:*
 - *The existing and proposed irrigation easements are required to be shown on the final plat, as shown on the preliminary plat. (Final Plat Requirement 2)*
 - *A notification that the placement of structures or the planting of vegetation other than grass is prohibited without the written permission of the ditch owner shall be included in the notifications document. (Condition 1)*

Conclusion of Law

With the requirement and condition of final plat approval, this prerequisite will be met.

F. Provides for the appropriate park dedication or cash-in-lieu, if applicable.

Finding of Fact

The subdivision consists of three proposed lots, which are each larger than 5.0 acres. (Bella Sera Subdivision File)

Conclusion of Law

Because the proposed lots are all larger than 5.0 acres, this prerequisite is not required.

G. Overall Findings and Conclusions on Prerequisite Requirements

There is adequate evidence to demonstrate compliance with each prerequisite to approval.

COMPLIANCE WITH APPLICABLE REGULATIONS

Section 3-2-8(b) of the RCSR states that in approving, conditionally approving, or denying a subdivision application and preliminary plat, the BCC shall ensure the subdivision application meets Section 3-2-8(a) above, and whether the proposed subdivision complies with:

A. These regulations, including, but not limited to, the standards set forth in Chapter 5.

Findings of Fact

1. The subdivision design as indicated on the preliminary plat meets the design standards in Chapter 5 of the RCSR, with the exception of a cul-de-sac that exceeds 1,400 feet in length. The applicant is requesting a variance from this provision. (Bella Sera Subdivision File)
2. This development proposal has followed the necessary application procedures and has been reviewed in compliance with Chapter 3 of the RCSR. (Bella Sera Subdivision File)

Conclusions of Law

1. The preliminary plat and subdivision application meet all applicable standards required in the RCSR.
2. The requirements for the application and review of this proposed subdivision have been met.

B. Applicable zoning regulations.

Findings of Fact

1. The subject property is under the jurisdiction of the interim zoning regulation limiting subdivisions to a density of one dwelling per two acres

(recorded as Resolution 2193). The application complies with Resolution 2193.

2. The property is not within one of the voluntary zoning districts in Ravalli County. (Bella Sera Subdivision File)

Conclusion of Law

This proposal complies with existing zoning regulations.

C. Existing covenants and/or deed restrictions.

Findings of Fact

There are no existing covenants on the property. (Bella Sera Subdivision File)

Conclusion of Law

Compliance is not applicable.

D. Other applicable regulations.

Findings of Fact

1. Following are regulations that may apply to this subdivision:
 - Montana Subdivision and Platting Act, Title 76, Chapter 3, MCA
 - Montana Sanitation in Subdivisions Act, Title 76, Chapter 4, MCA
 - Ravalli County Subsurface Wastewater Treatment and Disposal Regulations
 - Montana Standards for Subdivision Storm Drainage (DEQ Circular 8)
 - Applicable laws and policies requiring permits related to development (U.S. Army Corps of Engineers, Bitterroot Conservation District, Ravalli County Road & Bridge Department, Montana Department of Transportation, Montana Department of Environmental Quality, etc.)
2. Prior to final plat approval, the applicants are required to submit permits and evidence that they have met applicable regulations. (Section 3-4-4(a), RCSR)

Conclusion of Law

With the requirements of final plat approval, the application will meet all of the applicable regulations.

E. The MSPA, including but not limited to an evaluation of the impacts of the subdivision on the following criteria:

CRITERION 1: EFFECTS ON AGRICULTURE

Findings of Fact:

1. The proposed major subdivision on approximately 35.25 acres will result in 3 lots that range in size from 10.76 acres to 13.09 acres. The property is located southeast of Corvallis off Hamilton Heights Road. (Bella Sera Subdivision File)
2. There is one existing residence on the property. (Bella Sera Subdivision File)

3. Parcels surrounding the subject property are classified for tax purposes as farmstead rural and vacant land rural. The subject property is classified as residential rural. (Montana Cadastral Database created by Montana Department of Administration, Information Technology Services Division, Geographic Information Services and 2005 Aerial Photography created by the National Agricultural Imagery Program)
4. According to the Web Soil Survey for Ravalli County, approximately 90.0% of the soils located on the property are categorized as "Prime farmland if irrigated". There are no soils classified as Farmland of Statewide Importance. (Bella Sera Subdivision Application and Web Soil Survey, U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS))
5. The subdivider has offered a \$500 per lot contribution to offset the impacts of the subdivision on loss of agricultural lands. (Exhibit A-2)
6. The applicants submitted a Ravalli County Subdivision Noxious Weed Evaluation Form that stated Canada Thistle, Common Tansey, and Houdstounge were spotted on the perimeter of the property. (Bella Sera Subdivision Application)
7. Any person proposing a development that needs state or local approval and that results in the potential for noxious weed infestation within a weed district shall notify the weed board at least 15 days prior to activity. Consequently, 15 days prior to activities requiring a revegetation plan, such as road construction, a plan shall be submitted to the weed board for approval by the board. (7-22-2152, MCA)
8. *Following are conditions and requirements of final plat approval that will mitigate the impacts of the subdivision on agriculture:*
 - *A notification of proximity to agricultural operations shall be included in the notifications document filed with the final plat. The protective covenants, also filed with the final plat, shall include a provision requiring homeowners to keep pets confined to the house, a fenced yard, or in an outdoor kennel. (Conditions 1 and 2)*
 - *Staff recommends that the applicant negotiate a contribution with the BCC, to be deposited into an account for the Open Lands Program, as a way of offsetting the loss of prime farmlands. (Condition 12)*
 - *The approved Ground Disturbance and Noxious Weed Management Plan is required to be submitted prior to final plat approval. (Final Plat Requirement 11)*
 - *A noxious weed control provision shall be included in the protective covenants filed with the final plat for this subdivision. (Condition 2)*

Conclusion of Law:

With the mitigating conditions of approval and requirements of final plat approval, there will be minimal impacts on agriculture.

CRITERION 2: EFFECTS ON AGRICULTURAL WATER USER FACILITIES

Findings of Fact

1. The subdivision has the following water rights which will be allocated among the newly created lots. (Application):
 - a. DNRC right 76H 1069-00, which appropriates 224.4 gallons per minute (GPM) from Willow Creek.
 - b. DNRC right 76H 1065-00, which appropriates 112.2 gallons per minute (GPM) from Willow Creek.
 - c. DNRC right 76H 1070-00, which appropriates 403.92 gallons per minute (GPM) from Willow Creek.
 - d. DNRC right 76H 1071-00, which appropriates 336.6 gallons per minute (GPM) from Willow Creek.
2. The average lot size for this proposal is approximately 11.75 acres. (Bella Sera Subdivision File)
3. The subdivider is proposing to distribute irrigation water among all proposed lots. (Bella Sera Subdivision File)
4. The applicant has submitted a master irrigation plan which provides 20-foot irrigation easements to each of the proposed lots. In addition to the irrigation plan, an irrigation agreement has been submitted which describes the allocation of water shares and the watering schedule for each of the proposed lots. (Bella Sera Subdivision Application)
5. An existing irrigation ditch (Rock Ditch) traverses the southern boundary of the property. The subdivider is proposing a 20-foot irrigation ditch easement. (Bella Sera Preliminary Plat)
6. The Bitterroot Irrigation District (B.R.I.D.) Canal abuts the northern property boundary. (Bella Sera Preliminary Plat)
7. In a letter dated October 31, 2007 and subsequent phone conversation on June 2, 2008, John Crowley, BRID manager, stated that the BRID canal is prone to seepage and requires regular maintenance, including the use of heavy equipment. Mr. Crowley requested that construction activities not be located within 50 feet of the canal, which will provide necessary room for equipment to perform maintenance. (Exhibits A-3 and A-4, Effects on Public Health and Safety)
8. Mr. Crowley requested that the developer install a safety fence set back 50 feet from the ditch for the entire length of the property, and that homes be set back 50 feet from the ditch. (Final Plat Requirement 27, and Exhibits A-3 and A-4)
9. *Following are conditions and requirements of final plat approval that will mitigate the impacts of the subdivision on agricultural water user facilities:*
 - *Master irrigation plan is required to be filed with the final plat. (Final Plat Requirement 20)*
 - *All existing and proposed irrigation and drainage easements are required to be shown on the final plat, as shown on the preliminary plat. (Final Plat Requirement 2)*
 - *A notification and covenant stating that the placement of structures or the planting of vegetation other than grass is prohibited without the written permission of the ditch owner shall be included in the notifications and covenants document. (Conditions 1 and 2)*

- *A notification that lots within the subdivision do not have the right to take water from the BRID Canal shall be included in the notifications document. (Condition 1)*
- *The final plat shall show a 50-foot wide setback from the BRID Canal along the northern boundary of the property. Additionally, a statement in the notifications document and a covenant about the construction setback shall be included in the notifications and covenants document. (Conditions 1, 2, and 18)*
- *Installation of safety fencing along the BRID ditch. (Final Plat Requirement 27)*
- *The covenants shall include a provision detailing the maintenance of the safety fence along the BRID canal. (Condition 2)*

Conclusion of Law

With the mitigating conditions of approval and requirements of final plat approval, there will be minimal impacts on agricultural water user facilities.

CRITERION 3: EFFECTS ON LOCAL SERVICES

Findings of Fact:

Fire Department

1. The subdivision is located within the Corvallis Rural Fire District. (Bella Sera Subdivision File)
2. The Fire District was notified of the proposal, but no comments specific to this subdivision have been received to date. (Bella Sera Subdivision File)
3. The All Valley Fire Council, which includes the Corvallis Rural Fire District, has adopted Fire Protection Standards (outlined in document from the Hamilton Rural Fire District) that address access, posting of addresses, and water supply requirements. (Exhibit A-5)
4. In a letter dated May 29, 2008, the Corvallis Rural Fire Department stated that it costs over \$900 to provide adequate water supply per lot for new subdivisions. The letter requests that the \$500 in-lieu of water supply be increased to \$900. (Exhibit A-6)
5. The subdivider has offered a \$500 per lot contribution to the fire district. (Exhibit A-2)
6. *The following conditions will mitigate impacts of the subdivision on the Fire District:*
 - *Provisions in the covenants requiring that addresses are posted as soon as construction begins and that all driveways over 150 feet meet the standards of the Fire District. (Condition 2)*
 - *The covenants shall include a recommendation that houses within this subdivision be built to International Residential Building Code (IRBC) building standards. (Condition 2)*
 - *The subdivider shall provide evidence with the final plat submittal that they have applied for County-issued addresses for each lot within this subdivision. (Condition 4)*
 - *Prior to final plat approval, the subdividers shall provide a letter from the Corvallis Rural Fire District stating that the subdividers have provided the*

required 1,000 gallon-per-minute water supply or 2,500 gallon-per-lot water storage for fire protection for each lot within this subdivision. Alternatively, the subdividers may provide evidence that an amount-per-lot contribution has been made to the Corvallis Rural Fire District with the final plat submittal in lieu of the required water supply or water storage for fire protection. (Condition 5)

- The following statement shall be shown on the final plat: "The All Valley Fire Council, which includes the Corvallis Rural Fire District, has adopted the Fire Protection Standards. All accesses, including driveways to residences over 150' in length, must have a minimum unobstructed travel surface width of 22', a vertical clearance of 13'6" and an all-weather surface that can accommodate the weight of a fire truck. Please contact the Corvallis Rural Fire District for further information". (Condition 6)*

School District

7. The proposed subdivision is located within the Corvallis School District. (Bella Sera Subdivision File)
8. It is estimated that two to three school-aged children will be added to the Corvallis School District, assuming an average of 0.5 children per household. (Census 2000)
9. The applicant is proposing to contribute \$1000 per lot to the School District, to be split between final plat and first conveyance. (Exhibit A-2)
10. Notification letters were sent to the Corvallis School District requesting comments on October 22, 2007 and May 20, 2008. (Bella Sera Subdivision File)
11. In a letter received October 29, 2007 (Exhibit A-7), Daniel Sybrant, Corvallis Schools Superintendent, stated that new subdivisions "certainly create additional costs to this school district". Additionally, he stated the following:
 - (a) The recently completed impact fee study for the Corvallis School District allows up to \$7300.00 per lot to offset the costs to capital facilities.
 - (b) That the BCC should negotiate a fair fee with developers that will help offset the actual costs of educating additional children.
 - (c) That bus turnouts as well as shelters for students to stand under in inclement weather be installed where appropriate.
12. Even though the Corvallis School District has completed an impact fee study, Ravalli County has not adopted impact fees to date. The County cannot request a contribution for capital expenses until an impact fee has been adopted. (MCA 7-6-1603)
13. In his October 29th letter, Mr. Sybrant includes the Budget Per Pupil/Tax Levy Per Pupil information for Ravalli County. According to the document, the tax levy per pupil, excluding capital, would be \$6,544 for the Corvallis School District. (Exhibits A-7 and A-8)
14. *Staff recommends that the applicant negotiate a contribution with the BCC, in consultation with the Corvallis School District, if possible, to mitigate potential impacts of the additional students on the School District. (Condition 7 and Final Plat Requirement 24)*

Public Safety

15. The Ravalli County Sheriff's Office provides law enforcement services to this area. (Bella Sera Subdivision File)
16. Notification letters were sent to the Ravalli County Sheriff's Office requesting comments on October 22, 2007 and May 20, 2008, but no comments have been received from the Sheriff's Office. (Bella Sera Subdivision File)
17. This proposed subdivision is located approximately eight miles from the Sheriff dispatch in Hamilton. (Bella Sera Subdivision File)
18. The average number of people per household in Ravalli County is 2.5. (Census 2000)
19. This proposal will add approximately five people to Ravalli County. (Census 2000)
20. The applicant is proposing a \$500 per lot contribution for Public Safety Services (Sheriff's Office, E-911, and the Department of Emergency Services) for the potential five additional people. (Exhibit A-2)
21. *To mitigate impacts on Ravalli County Public Safety Services, the subdivider shall submit a (amount)-per-lot contribution to the Ravalli County Treasurer's Office to be deposited into an account for Public Safety Services (Sheriff, E-911, DES) prior to final plat approval. (Condition 8)*

Roads

22. There are three proposed residential lots within this subdivision. It is estimated at build-out that this subdivision could generate a total of 24 vehicular trips per day, assuming eight trips per day per lot. (Bella Sera Subdivision File)
23. Hamilton Heights Road, a County-maintained road, provides access to the site. (Bella Sera Subdivision File and Ravalli County GIS Data)
24. The existing easement for Hamilton Heights Road varies between 40 and 60 feet. (Bella Sera Subdivision Application)
25. The applicant is required to pay pro rata towards improving Hamilton Heights Road. (Section 5-4-5, RCSR)
26. The preliminary pro rata estimate included in the application projects that the applicant will be required to contribute approximately \$7,593.00 in pro rata funds. (RCSR and Bella Sera Subdivision Application)
27. The proposal will require a change in use permit for the approach. Bella Sera Way accesses onto Hamilton Heights Road (Bella Sera Subdivision Application)
28. The applicant is proposing one internal road, Bella Sera Way, which will serve the subdivision. (Bella Sera Subdivision Application)
29. There is a proposed Road Maintenance Agreement for Bella Sera Way. (Bella Sera Subdivision File)
30. The road plans for Bella Sera Way have received preliminary approval from the Ravalli County Road and Bridge Department. (Bella Sera Subdivision File, Final Plat Requirement 27, Exhibit A-1)
31. *To mitigate impacts on the roads leading to the subdivision, the following conditions and requirements shall be met:*
 - *A copy of the General Discharge Permit for Stormwater Associated with Construction Activity from DEQ shall be submitted prior to final plat approval, if applicable. (Final Plat Requirement 10)*

- *Prior to final plat approval, evidence of a Ravalli County approved road name petition for the new road shall be provided. (Final Plat Requirement 14)*
- *Final Road Plans and Grading and Storm Water Drainage Plans for the internal road shall be submitted with the final plat submittal. (Final Plat Requirement 16)*
- *Prior to final plat approval, the applicant shall submit certification from a professional engineer and Road Department approval showing that Bella Sera Way has been improved to meet County standards. (Requirements 17 and 27)*
- *A Road Maintenance Agreement shall be signed, notarized, and submitted for Bella Sera Way. (Final Plat Requirement 19)*
- *To mitigate potential impacts of this subdivision on any possible future public water, sewer system, or improvements to the road system, the RSID/SID waiver filed with the final plat shall address these services/facilities. (Condition 3)*
- *A stop sign and road name sign shall be installed at the intersection of Hamilton Heights Road and Bella Sera Way. (Condition 11)*
- *The easement for the internal subdivision road shall be labeled as a public road and utility easement on the final plat. (Condition 10 and Final Plat Requirement 2)*
- *The applicant shall submit the final approved approach permit from the Ravalli County Road and Bridge Department prior to final plat approval for the change in use for the existing approach to Hamilton Heights from Bella Sera Way. (Final Plat Requirement 13)*

Ambulance Services

32. Ambulance services will be provided by Marcus Daly Memorial Hospital EMS Department. Marcus Daly was contacted, but no comments have been received to date. (Bella Sera Subdivision File)
33. *To mitigate impacts on emergency services, the subdivider shall provide evidence with the final plat submittal that they have applied for County-issued addresses for each lot within this subdivision. (Condition 4)*

Water and Wastewater Districts

34. Individual wells and wastewater treatment systems are proposed to serve the lots. The property is not near any municipal water or wastewater systems. (Bella Sera Subdivision File)

Solid Waste Services

35. Bitterroot Disposal provides service to this site. (Bella Sera Subdivision File)
36. Notification letters were sent to Bitterroot Disposal requesting comments on October 22, 2007 and May 20, 2008, but no comments have been received. (Bella Sera Subdivision File)

Utilities

37. The proposed subdivision will be served by Ravalli Electric and Qwest Communications. Utility companies have been notified of the proposed subdivision. (Bella Sera Subdivision File)
38. Notification letters were sent to the utility companies requesting comments on October 22, 2007 and May 20, 2008. (Bella Sera Subdivision File)
39. *The following requirements will mitigate impacts of the subdivision on local utilities:*
 - *Existing and proposed utility easements shall be shown on the final plat. (Final Plat Requirement 2)*
 - *The applicant shall submit utility availability certifications from Ravalli Electric and Qwest Communications prior to final plat approval. (Final Plat Requirement 18)*

Conclusion of Law:

With the mitigating conditions of approval and requirements of final plat approval, impacts of the subdivision on local services will be reduced.

CRITERION 4: EFFECTS ON NATURAL ENVIRONMENT

Findings of Fact:

Air Quality

1. In an email dated April 1, 2008, the Montana Department of Environmental Quality (DEQ) identified Ravalli County as a community that experiences poor air quality during certain periods of the year. (Exhibit A-9)
2. The Montana DEQ has identified that burning sources – such as fireplaces and wood stoves – are the most common sources of particulate matter (PM-10 and PM-2.5). The smaller PM-2.5 particles, often referred to as "fine particulates," are easily inhaled and can cause tissue damage, emphysema, bronchitis, and cardiovascular complications. Children, seniors, and individuals with pre-existing respiratory diseases are most susceptible to these health risks. (Montana DEQ Citizens Guide to Air Quality in Montana <http://www.deq.mt.gov/AirMonitoring/citguide/understanding.asp>)
3. *To mitigate impacts on air quality, the covenants shall include a provision recommending that homeowners refrain from installing wood stoves. (Condition 2)*

Ground/Surface Water

4. The applicants are proposing individual wells and wastewater treatment facilities for all lots. The applicants submitted water and sanitation information per MCA 76-3-622 for the proposed systems. (Bella Sera Subdivision File)
5. The Ravalli County Environmental Health Department provided documentation indicating that they have received adequate information for local subdivision review to occur. (Exhibit A-10, MCA 76-3-622)
6. *To mitigate impacts on the natural environment, the applicant is required to submit a final DEQ Certificate of Subdivision Approval prior to final approval. (Final Plat Requirement 9)*

Light Pollution

7. The addition of homes in an area that currently has lower density development has the potential to create light pollution. Sky glow, glare, light trespass into neighbor's

homes, and energy waste are some of the components of light pollution.
(International Dark-Sky Association, www.darksky.org)

8. *To mitigate the impacts of light pollution stemming from new construction, the protective covenants shall include a provision recommending full cut-off lighting on new construction. (Condition 2)*

Vegetation

9. The Montana Natural Heritage Program did not identify any plant species of concern within the same section as the subject property. (Bella Sera Subdivision Application)
10. The applicants submitted a Ravalli County Subdivision Noxious Weed Evaluation Form that stated Canada Thistle, Common Tansy and Houndstounge were spotted on the perimeter of the property. (Bella Sera Subdivision Application)
11. Any person proposing a development that needs state or local approval and that results in the potential for noxious weed infestation within a weed district shall notify the weed board at least 15 days prior to activity. Consequently, 15 days prior to activities requiring a revegetation plan, such as road construction, a plan shall be submitted to the weed board for approval by the board. (7-22-2152, MCA)
12. *To mitigate impacts on the natural environment, the following condition and requirement shall be met:*
 - *A noxious weed control provision shall be included in the protective covenants filed with the final plat for this subdivision. (Condition 2)*
 - *A noxious weed control plan shall be submitted with the final plat. (Final Plat Requirement 11)*

Archaeological Resources

14. There are no known sites of historical significance on the property. (Bella Sera Subdivision Application)
15. *To mitigate possible impacts on any potential sensitive historical, cultural, archaeological, paleontological, and/or scenic sites, the following statement shall be included in the covenants: "If any archaeological, historic, or paleontological sites are discovered during road, utility, or building construction, all work will cease and the developer will contact the State Historic Preservation Office to determine if the find constitutes a cultural resource and if any mitigation or curation is appropriate". (Condition 2)*

Conclusion of Law:

Impacts from this subdivision on the natural environment will be reduced with the mitigating conditions and requirements of final plat approval.

CRITERION 5: EFFECTS ON WILDLIFE & WILDLIFE HABITAT

Findings of Fact:

9. In a letter dated May 10, 2007, FWP recommended living with wildlife covenants. (Exhibit A-11)
10. A Sensitive Species Report was not required for the subdivision, because the Montana Natural Heritage Program indicated that there are no known species of

concern located within the same section as the subject property. (Bella Sera Subdivision Application)

11. *To mitigate impacts on wildlife, the covenants shall include a living with wildlife section. (Condition 2)*

Conclusion of Law:

With the mitigating conditions of approval, impacts on Wildlife & Wildlife Habitat will be reduced.

CRITERION 6: EFFECTS ON PUBLIC HEALTH & SAFETY

Findings of Fact:

Traffic Safety

1. Access is proposed off Hamilton Heights Road and Bella Sera Way. (Bella Sera Subdivision Application)
2. *The requirements and conditions listed under Roads in Criterion 3 will mitigate the impacts of the subdivision on traffic safety.*

Emergency Vehicle Access and Response Time

3. The proposed subdivision will be served by the Stevensville Rural Fire Department, the Ravalli County Sheriff's Office, Ravalli County E-911, the Ravalli County Department of Emergency Services, and Marcus Daly Memorial Hospital EMS Department. (Bella Sera Subdivision Application)
4. *The requirements and conditions listed under Fire District, Law Enforcement and County Emergency Services, Ambulance Services, and Roads in Criterion 3 will mitigate the impacts of the subdivision on emergency vehicle access and response time.*

Water and Wastewater

5. The applicants are proposing individual wells and wastewater treatment facilities for all Lots. The applicants submitted water and sanitation information per MCA 76-3-622 for the proposed systems. (Bella Sera Subdivision File)
6. The Ravalli County Environmental Health Department provided documentation indicating that they have received adequate information for local subdivision review to occur. (Exhibit A-10, MCA 76-3-622)
7. The subject property is located in an area where there is known to be natural occurrences of arsenic. There is the potential for wells to have arsenic levels that are not suitable for drinking water. Prior to receiving a DEQ Certificate of Subdivision Approval, the applicant will be required to prove that wells drilled within this area do not exceed appropriate levels of arsenic contamination. (Exhibit A-12)
8. *The applicant is required to submit a final DEQ Certificate of Subdivision Approval prior to final approval. (Final Plat Requirement 9)*

Natural and Man-Made Hazards

9. According to a document titled "Radon and You, Promoting Public Awareness of Radon in Montana's Air and Ground Water" published by DEQ and the Montana Bureau of Mines and Geology, there is a high potential for radon in Ravalli County. (DEQ)
10. According to the Web Soil Survey for Ravalli County, there are soils rated as "very limited" for building and road construction. (Bella Sera Subdivision

Application and Web Soil Survey, U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS))

11. The Bitterroot Irrigation District (BRID) Canal abuts the northern property boundary. (Bella Sera Preliminary Plat)
12. In a letter dated October 31, 2007 and subsequent phone conversation on June 2, 2008, John Crowley, BRID manager, stated that the BRID canal is prone to seepage and requires regular maintenance, including the use of heavy equipment. Mr. Crowley requested that construction activities not be located within 50 feet of the canal, which will provide necessary room for equipment to perform maintenance. (Exhibits A-3 and A-4, Effects on Public Health and Safety)
13. Mr. Crowley requested that the developer install a safety fence along the toe of the canal for the entire length of the property, and that homes be set back 50 feet from the toe of the ditch. (Final Plat Requirement 27, and Exhibits A-3 and A-4)
14. There is an existing gravel pit on proposed Lot 2. The steep embankments of the gravel pit represent an inherent public health and safety issue. (Staff Determination)
15. *To mitigate the impacts of this subdivision on public health and safety, the following conditions and requirements shall be met:*
 - *To mitigate the impacts of light pollution stemming from new construction, the protective covenants shall include a provision recommending full cut-off lighting on new construction. (Condition 2)*
 - *The covenants shall include a statement regarding radon exposure. (Condition 2)*
 - *Notifications of the "very limited" soils in question shall be included in the notifications document. (Condition 1)*
 - *The final plat shall show a 50-foot wide setback from the BRID Canal along the northern boundary of the property. Additionally, a statement in the notifications document and a covenant about the construction setback shall be included in the notifications and covenants document. (Conditions 1, 2, and 18)*
 - *Installation of safety fencing set back 50 feet from the BRID canal. (Final Plat Requirement 27)*
 - *The covenants shall include a provision detailing the maintenance of the safety fence along the BRID canal. (Condition 2)*
 - *The applicant shall fill the gravel pit located on Lot 2. Alternatively, the gravel pit shall be graded at a slope of 2:1 and be labeled as a no-build/alteration zone on the final plat. (Condition 13)*

Conclusion of Law:

The mitigating conditions and requirements of final plat approval will address impacts on Public Health & Safety.

VARIANCE REQUEST

The applicant has requested a variance from Section 5-4-4(h), Table B-1 of the RCSR to allow a cul-de-sac road providing access to the proposed subdivision to exceed the maximum length of 1,400 feet. Chapter 2 of the RCSR defines a cul-de-sac road as "a street having only one outlet for vehicular traffic and terminating in a vehicle turn-around area. The cul-de-sac road (Bella Sera Way) is approximately 2,150 feet in length.

A. Prerequisite Variance Criteria

Section 7-3-5(a), RCSR, states that the BCC shall first determine that strict compliance with these regulations will result in undue hardship and when compliance is not essential to the public welfare.

Prerequisite 1: Strict compliance with these regulations will result in undue hardship.

Findings of Fact

1. Bella Sera Way does not meet the maximum cul-de-sac road length of 1,400 feet. (Section 5-4-4(h), RCSR)
2. The applicant cannot redesign the subdivision with a shorter cul-de-sac road because 1,300 feet of Bella Sera Way is located on the property to the south. Because the maximum cul-de-sac length is 1,400 feet, the regulations only leave 100 feet of Bella Sera Way to access the proposed subdivision lots. (Staff Determination)
3. In order to meet the Subdivision Regulations, the applicant would need to acquire additional road easement on surrounding properties to connect Bella Sera Way to an off-site road. (Staff Determination)
4. The BRID Ditch borders the northern property boundary and would make it challenging for the applicant to connect to Maki Lane to the north. Maki Lane is a privately-maintained road and it is not known if the associated easement is public or private. (Staff Determination)
5. In order to connect to Davidson Lane to the east, the applicant would need to acquire easement across the property to the east. Davidson Lane is a privately-maintained road and it is not known if the associated easement is public or private. (Staff Determination)
6. Currently, there are no roads to the west that would provide a connection. (Staff Determination)
7. The applicant could obtain additional easement to the south to create a loop road back to Hamilton Heights Road, but this may be a waste of resources (land and materials) to serve only three lots. (Staff Determination)
8. The applicant is proposing two additional lots. All three lots within the subdivision are proposed to be greater than 10.00 acres. (Bella Sera Preliminary Plat Application)

Conclusion of Law

Due to the fact that this proposal would result in three lots greater than 10.00 acres, the challenges in obtaining the additional easement to make the cul-de-sac road into a through-road are an undue hardship.

Prerequisite 2: Compliance is not essential to the public welfare.

Findings of Fact

1. Bella Sera Way will serve three lots for a total of approximately 24 trips per day. (Bella Sera Preliminary Plat Application)
2. The Corvallis Rural Fire District, Marcus Daly Memorial Hospital EMS Department, and the Ravalli County Sheriff's Office were all notified of this variance because they will be providing emergency services. No comments have been received to date. (Bella Sera Subdivision File)
3. The portion of Bella Sera Way from Hamilton Heights Road to the southern property boundary is an existing 20-foot wide paved, privately-maintained road within an existing 60-foot wide private road easement that is approximately 1,300 feet in length. There is an existing turnaround with a 37-foot turning radius at the southwestern corner of the property. (Bella Sera Preliminary Plat Application)
4. The second portion of the road from the southwest corner of the property along the southern boundary of the property is an existing 22-foot wide paved road within a proposed 80-foot wide private easement. The applicant is proposing to extend this road to access Lot 3 ending in a turnaround with a 37-foot turning radius. (Bella Sera Preliminary Plat Application)

Conclusions of Law

1. Bella Sera Way will be serving a low number of trips per day.
2. Emergency service providers do not appear to have any concerns over the granting of this variance.
3. With the final plat requirements, there will be two turnarounds on Bella Sera Way.
4. In this case, compliance with Section 5-4-4(h), Table B-1 of the RCSR is not essential to public welfare.

B. Variance Review Criteria

Following the determination on the prerequisite criteria, the BCC shall not approve the variance application unless it makes an overall positive finding, based on substantial competent evidence, on the following criteria:

Criterion 1: The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.

Finding of Fact:

See findings for Prerequisite 2.

Conclusion of Law:

The granting of the variance will not be substantially detrimental to public health and safety, general welfare, and adjoining properties.

Criterion 2: The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.

Findings of Fact:

1. The proposal is for three lots greater than 10.00 acres each. (Bella Sera Preliminary Plat)
2. There are significant challenges in connecting to other off-site roads in the area. (See Findings 4, 5, 6, and 7 under Prerequisite 1)

Conclusion of Law:

The significant challenges in making Bella Sera Way a through-road to serve three lots is a condition unique to the property.

Criterion 3: Physical conditions, such as topography or parcel shape, prevent the subdivider from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).

Findings of Fact:

1. The BRID Ditch borders the northern boundary of the property. This would make it physically challenging, but not impossible, to connect to Maki Lane to the north. (Staff Determination)
2. The other potential road connections in the area may not have public easements, but this is not a physical challenge. (Staff Determination)

Conclusion of Law:

While there are legal and physical challenges to meeting the cul-de-sac length requirement, there are no physical conditions that prevent the subdivider from meeting this requirement.

Criterion 4: The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.

Findings of Fact:

1. The subject property is under the jurisdiction of the interim zoning regulation limiting subdivisions to a density of one dwelling per two acres (recorded as Resolution 2193). The application complies with Resolution 2193.
2. The provisions in the Growth Policy do not address public health and safety issues.

Conclusions of Law:

1. The subdivision proposal complies with applicable zoning regulations.
2. There are no provisions in the Growth Policy that are related to this variance request.

Criterion 5: The variance will not cause a substantial increase in public costs.

Findings of Fact:

1. Bella Sera Way is proposed to be constructed to meet or exceed County standards. The road as proposed will adequately serve the proposed three-lot subdivision. (Exhibit A-1, Staff Determination)
2. No emergency service providers have commented with concerns about the granting of this variance. (Bella Sera Subdivision File)

Conclusion of Law:

The granting of the variance will not cause a substantial increase in public costs.

Overall Findings Based on Substantial Competent Evidence

1. Four out of five variance criteria are true.
2. The granting of this variance will not negatively impact public health and safety, the proposal presents a unique situation, the variance will not vary from zoning or the Growth Policy, and there will not be a substantial increase to public cost. These criteria outweigh the fact that there are no physical conditions preventing the applicant from meeting the cul-de-sac length requirement.
3. The overall finding is positive.

Commissioner Grandstaff opened public comments.

George stated it is a well conceived subdivision. There is agriculture production to the north and the east. He feels the agricultural issue is a technical one. He pointed out the water issues. It has been classified as prime farmland if irrigated. 'If irrigated' are the key words here. The question is if it can be irrigated. With the water rights, it is clear that it cannot. The irrigation master plan has been designed by a water rights expert. The lots sizes being 10 to 12 acres are consistent with the large open areas in the neighborhood. There will also be very good covenants in place allowing no further splits. There will be no manufactured homes allowed as well as restrictions and guidelines for the homes. There will also be height restrictions. There are covenants for animals, dust control and weed control. As for the BRID ditch fencing, there is a barbed wire, chain link fence. There is already a fence in place.

Lesley Maki stated she has a petition against this subdivision. She then read the names on the petition. The viable agricultural ground is of large acreage. They believe in feeding people and with the increase in costs, there is a need to provide local food sources. It does not make sense to put 10 acre lots of rural capacity when it is 40 acres of agricultural land.

Dick Murphy stated he owns the property to the south of the subdivision. He is a Llama rancher and irrigates. This land has been used for agriculture and grazing for cattle. In regard to the water right issue, there are 14 water rights on the ditch. Everything is fine this time of the year however, in August, there are more rights than water. Adding more people to the ditch will cause more trouble. It makes adversaries out of neighbors. Putting a house directly in the view of his home will cause a hardship. If he tries to sell, the view

will be ruined. If you don't irrigate, you don't have anything. The water table is high in that area however if you put in septic systems, that will change.

Andy Maki stated he is a fourth generation farmer. When he was a kid, they leased this property. They asked to split it once already and now they are again. If it is split again, they will have over 35 primary users of the ditch. If it is approved, they would like to know how they will get their ditch water. The grounds cannot support the well water or the irrigation water. The people who purchase this property will not have the water they need. The water rights on the Rock Ditch are the best irrigation water. These water rights are the best in the state. The courts in Montana look favorably on agriculture and water right users and that needs to be considered. He is an existing agricultural operation with cows and during the winter time it is almost 500 head. It is open space and probably the most open space in the county. He stated by approving this subdivision, the Board is inviting a precedence for other properties to subdivide. It is ridiculous. Please deny this subdivision.

Merlin Hochstetler stated he is a user of the Rock Ditch. He is one of three people at the end of the ditch. How does the Board propose to control the water rights for all users? Everyone has rights and they need to be upheld.

Jerry Downey stated he lives one mile to the north of the subdivision. He has been volunteering his time to work with the Corvallis CPC. The last draft of the zoning map had this area listed with much more density. It has open space that means a lot to the county and to the people. One of the things he is asking is to take into account all the volunteer hours to develop this valley. He believes they can do some sustainable progress for this valley. He irrigates as well from Willow Creek ditch. He has seen what happens with splitting water rights. It makes it a nightmare. The Board should consider not allowing this kind of development in this area.

Neil Maki stated he is against this subdivision. He has lived here all his life and irrigated this farm for over 60 years. This farmland is the best of the best in Montana. When he irrigated it, it had good pasture mix on it. He has raised 3 cow-calf pairs per acre on the land and that is unheard of. It is commonly 1 cow-calf pair per 30 acres. He has also raised oats and wheat and barley as well. He talked about irrigating his well. When you start irrigating it will bring the well water up for you and your neighbors. It takes about a week. Now wells are going dry. The irrigation issue is the number one issue of the valley. If we lose it, we lose the agricultural product. If we lose this, we are going to become a third world country. How many acres have we already destroyed in this valley? You can farm this land for ten years and lose 2% per ten years for soil. If we run out of commercial fertilizer we are doomed.

Kay Gervais stated the Maki family is the last of the working ranchers and farmers. They are fighting to preserve the agricultural life. Do we need to have every piece of land turned into a subdivision? We need to produce hay, beef and wheat to live. There is a lot of expenses to be in agricultural production such as rising fuel costs and never ending days. Why destroy prime farmland and develop more homes when they are not selling?

Fran Maki stated this parcel has always been listed as prime farmland of importance. The developer stated this is an issue of it being a different interface. We need to protect that interface. This property has always been green and productive and it could still be if it is irrigated. In order to keep it a greenbelt, it needs to be kept irrigated. There is no enforcement for the covenants. It puts a burden on the farmers who need it for their industry.

Alan Maki stated 5.9% of Ravalli County can be prime farmland. We are looking at the most productive soils in the county and rank as so on the national level. He read the covenants. He stated they are currently grazing 30 cows per acre. He bales his hay at night and the lights on the tractor are bright. \$50 per acre to mitigate the loss of agricultural land is a joke. Look at the news. Prime farmland is producing \$400 per acre and it goes back into the economy. It is a renewable resource. To the west, there is a newly planted oat field. As for the non-irrigated land, they didn't even try to irrigate it. He presented the corn, alfalfa, soy beans and barley he has grown on his property to the Board. He gave the yields in tons per acre for each. The point is with the prime farmland, you can get 6 or 7 tons of hay off of it. Products grow here. It is productive and it needs to be protected. The Rock Ditch is designed to get water from other runoffs. The downstream users have used the other water source up. Their only source is the runoffs. It is not fair to put these asphalt roads in and then expect it to be maintained by the new homeowners. As agricultural producers, they are already getting over-taxed. The greenbelt goes north to south and up the creek. There is a number of species existing in the area. As for public health and safety, it is a non-defined aquifer. There is a siphon on the ditch off of lot 1. It is not fair to increase the liability on the irrigation with the possibility of small children getting sucked into the siphon. This is a domino effect and will affect the water.

Kay Downey stated her ranch backs up the Maki ranch. She has 160 acres. Her husband used to speak about protecting the rights of the ranchers and farmers. This is the most beautiful place on earth. She was told by her mother the beauty would be destroyed by the growth. It has happened. The noxious weed problem is a real concern. Her front 40 acres does not receive all of the irrigation water. Everywhere it is not irrigated, has weeds. She is a poor rancher but hires temps from A to Z to dig the weeds. The Commissioners should know what this means to the future of this valley.

George stated he would like to respond. He stated they have a great deal of respect for the ranchers and farmers of this valley. This is prime farmland and is the best of the best if it is irrigated. They have admitted they are the last in the line of the rights for the Rock Ditch. Either they can use more water taking away from the Makis or they can put it back into the ditch so others may use it. As for the enforcement of water use, there isn't any enforcement now. They are not creating any more than what is existing now. The Makis stated this land could be sold as a whole. Yes that is true, however, the person who would buy it would probably split it. George stated the zoning of these large lots for agricultural use is not accurate. This is a clear case of wanting the cake and eating it too. There is a FAA approved air strip that is licensed and approved in that area. That already cuts that land into two pieces and in addition to that, most people would not want to live next to

the air strip. They are creating two new homes here, not a 50 lot subdivision. He does not understand how two houses could destroy the ability to farm for its neighbors. The ditch is protected from children for falling into the ditch. If the water rights are that big of a deal by adding two residences, Mrs. Shimmons will rescind all the water rights. There is already a paved private road going to the residence. There is no sensitive species there or limited soils. There is also a weed management plan in place.

Alan Maki stated you are approving three lots here. This subdivision leap frogs the residential precedence and it will destroy their business.

Lesley Maki stated the FAA does not approve private air strips. She is a member of the Right to Farm and Ranch. They need to consider the impacts on the farmers and ranchers.

Andy Maki stated in order to make these irrigation rights work, you need maintenance. There will be siphon tubes that need replacing. When you cut the water users, you get people that do not care about the water. Then they start opting out of the rights and the last guy in the line can't get water and it is useless. For any lot over 10 acres, the DEQ recommends 500 feet on the ditch. The modeling in the soil is an indicator of a high water level. The property has to be re-monitored.

Neil Maki stated there is some development above his ranch and he found sewage in the ditch. Most people recognize sewer water as the ground being purple and with moss. When water cannot go through a ditch, it will back up. It did back-up on their ditch and saturated rock ledge. They had to get a bulldozer in there and a backhoe and it took a week to fix it and cost thousands of dollars. If the big ditch broke, it would be a nightmare.

George stated the BRID ditch is a separate piece of property. The septic and wells have been approved by DEQ. He would like to point out there were a number of letters supporting the subdivision because of the covenants that would be in place.

Joyce Shimmon stated there have been cattle run on the land but it only brings in \$600 per year. She stated she has never taken water out of the Rock Ditch even though she has a water right. The land is not irrigated and it is dry without irrigation. It is only prime farmland if irrigated. She stated she purchased it from Pigman who had proposed a subdivision with a lot more lots on it. It has not been in agriculture for years. The \$600 per year does not even touch the property taxes on this property and her husband has passed away. She stated she does not have any equipment to farm it or irrigate it. Joyce stated she offered to make a deal with the Makis to lease the property. She has tried to make this a nice place and keep the field open. The land to the west is now up for sale as well. It is proposed to be zoned one house per ten acres. There is no way for her to sustain herself on this land. She would like to stay on her piece but in order to stay she needs to sell the other land. The water situation now is as it is and by putting two more houses in there, is not going to change it a lot.

Joan Bryan stated she is a Maki and people do get by on smaller parcels such as organics. She stated her brothers are trying to save the farmland of this valley and the economy does not need anymore houses. She stated they can put a fence up but children are going to get into the siphon and the ditch. She stated if the Board allows this subdivision, it will kill the farm industry.

Fran Maki stated the big issue is the Rock Ditch. She mentioned the growth policy allowing irrigation to recharge the ditch. She stated they had to go to court for water rights and had a ditch rider come out and they had to pay for it for five years. It is a small example of one person moving in a subdivision creating problems. She stated they have been able to irrigate their parcels so Mrs. Shimmon can irrigate hers.

Al Baeble stated he lives on Willow Creek. He stated if you are not part of the solution you are part of the problem, if you are not part of the problem, you are part of the solution. He stated he is in favor of subdivisions, not this subdivision. Farm and ranch land takes a back seat to subdivisions because money talks. He stated 6% of land feeds America. The problem is it takes 18% of productive land to feed people let alone export. The government started buying food around the world for the troops. Only 6% of that food is coming from America. He stated the government is saying the U.S. can't produce enough and can't afford to feed America. He asked if America is going to buy the food needed from China. He is opposed to this subdivision. Agriculture is the only industry this valley has. Farming and ranching is it. There is a lot of marginal land with views of the mountains that people want. When agricultural land is taken out of production, it hurts the local people and the local farmers and ranchers.

Joyce stated just because someone lives in a certain area they shouldn't be expected to do a certain job. This land has been out of production for a long time. She asked if she is being forced into farming and ranching because of where her land is.

Commissioner Grandstaff closed public comment and opened Board deliberations for the variance request.

Commissioner Rokosch requested a ten minute recess and then reconvened after.

Prerequisite 1: Strict compliance with these regulations will result in undue hardship:

Tristan read the findings of fact by the Planning Staff.

Commissioner Rokosch questioned the cul-de-sac length criteria. Tristan replied it is based on public health and safety. Commissioner Grandstaff asked Tristan how a determination can be made without comment from the Corvallis Fire district. Tristan stated the CRFD was contacted and did not provide comment. He added if the road was looked at as two separate segments, each is less than 1300 feet in length which would meet the current subdivision regulations. Commissioner Chilcott agreed with the Staff Report findings.

Commissioner Driscoll stated she does not believe it is a hardship due to the plat. Commissioner Rokosch concurred he does not see this as unique situation. Commissioner Grandstaff stated she is in agreement with both Commissioners Rokosch and Driscoll.

Commissioner Chilcott questioned the practical ability of extending the cul-de-sac into an intersection. Tristan replied it is Staff's view on road layouts that spur roads restart the count on cul-de-sac length. Commissioner Chilcott noted he would rather turn around in a cul-de-sac than a road intersection.

Joyce stated it is a hardship to obtain an easement for the road and paving it with the removal of agricultural land being an issue. Commissioner Rokosch discussed the bridge and access from the north. He believes granting a variance for this road will cut into more agricultural land.

Commissioner Chilcott and Commissioner Thompson voted "yes". Commissioner Grandstaff, Commissioner Rokosch and Commissioner Driscoll voted "no".

Tristan stated it is in contrast to the findings in the Staff Report and therefore requires new findings. Commissioner Rokosch stated there are certainly some challenges but not undue hardship. He further stated he is fine with the findings but not in agreement with the Conclusion of Law. There are other options for easements.

Commissioner Driscoll stated this is affecting Maki Lane. Commissioner Grandstaff stated nothing has been determined with the roads being private or public. They do not know the answer since the options have not been explored. Commissioner Driscoll stated it was the landowner's decision to go with the variance rather than seeking other options such as obtaining an easement from the Makis. She would like to see Joyce make an effort to work with the Makis for a mutual agreement rather than a variance request.

Prerequisite 2: Compliance is not essential to the public welfare:

Commissioner Chilcott stated it is his understanding they have to base their decision on the evidence provided. There was reasonable notification to the entities to raise their concerns prior to this meeting. Commissioner Grandstaff stated the Sheriff does not respond because it will fall on deaf ears. If the Board needs to supply the evidence, his budget hearing can be considered. Commissioner Chilcott stated this is a road variance. It would fall under the subdivision deliberations.

Commissioner Driscoll stated the Board is able to look at the cumulative impacts around this subdivision. Commissioner Chilcott replied the Board does not have any evidence to support a change of the conclusions of law in a quasi-judicial role. Commissioner Driscoll stated the Board has to take in the whole picture. Commissioner Chilcott stated this is a case by case basis for variance requests. The Board has to make decisions based on evidence. Commissioner Rokosch stated the regulations are in place for a reason. The

Board has to consider all the evidence and make the determination of our assessment for public safety concerns.

Renee stated the applicants' representative is willing to continue to pursue comments from the Fire District, Sheriff's Office and Marcus Daly Hospital. Commissioner Grandstaff asked if Joyce would be willing to work with her neighbors for the easement rather than the variance. Joyce replied the discussion was about preserving agricultural land but now it is about cutting into the agricultural land and cutting into Maki Lane. She offered to try for negotiations.

Dick Murphy stated there is no other way into the property and the landowners would not be willing to grant any additional easement along the property to the east nor along Davidson Lane.

Commissioner Rokosch made a motion to continue until June 26th at 9 a.m. Commissioner Chilcott seconded the motion. Commissioner Grandstaff, Commissioner Rokosch, Commissioner Chilcott and Commissioner Thompson voted 'aye'. Commissioner Driscoll voted 'nay'. Motion carried.

Commissioner Driscoll requested more information about the water in relation to arsenic levels. Commissioner Rokosch requested the draft minutes be available for public comment review. Commissioner Chilcott stated the Board wants to make sure the water rights of the downstream water users are protected.